IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1739 OF 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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VIJAY RAMCHANDRA MORE - Appellant(s)
Versus
UNION OF INDIA & ANR. - Respondents(s)

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Appearance :
Shri P.R. Thakkar for Appellant(s) : 1,
Shri Bipin Bhatt for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/06/2007

ORAL JUDGMENT

1. Present is an appeal by the claimant seeking enhancement to the tune of Rs.40,000/- in addition to what has been awarded by the

learned Tribunal below.

2. As the other party has not filed any Cross Objections and has also not challenged the accident, the liability of the respondent to pay compensation is not in dispute, therefore, this Court is not required to detail the facts.

3. Shri Thakkar, learned Counsel for the appellant, after taking me through the judgement and other material, placing reliance upon a Division Bench judgement of this Court in the matter of ***A.S. Rajara @ Raja Vamshyam vs. Prabhudas Mandas Patel & Anr.***, [***1982 G.L.H. 442***], submits that in almost identical situation, a sum of Rs.75,000/- has been awarded to the victim, therefore, in the present case also, the appellant be awarded the same amount.

4. In the present matter, the doctor who examined the appellant on 26th April, 1980, that is, date of the accident, found the following injuries on the person of the claimant:

(i) Bleeding through urethra and multiple abrasions all over the body.

(ii) Suspected fractures of right pubic ramus and lateral condyle of right humerus.

The doctor further said that the appellant was operated upon for injury to urethra. It was found that urethra was ruptured and there was considerable haematoma in the surrounding region. However, the urinary bladder was intact and the torn urethra was fixed, the patient was discharged from the ward on 10th June, 1980. The claimant was advised to come to the hospital for dressing for fifteen days and thereafter, was required to come to the hospital for dilatation of urethra. The appellant made a statement before the learned Tribunal that he was unable to ride the bicycle and he was suffering pain in the abdomen. However, the learned Tribunal did not rely upon the said statements, holding that there was no medical evidence to support such complaints. The learned Tribunal also found that the claimant had to stay in the hospital for every dilatation and he would be required to pay Rs.6/- to Rs.10/- each time for dilatation. The learned Tribunal, however, awarded a sum of Rs.30,000/- in all. Simultaneously, the learned Tribunal awarded a sum of Rs.1,350/- towards the medical expenses and loss of salary.

5. It is submitted by Shri Thakker that the claimant's future prospects are absolutely finished, he cannot find a suitable match to have a happy matrimonial life and as, according to the opinion of the doctor, his sexual life would be adversely affected and he will have to suffer the problem for rest of the life, the appellant is entitled to an extra amount

of Rs.40,000/-.

6. Shri Bipin Bhatt, learned Counsel for the respondents, however, submitted that present appeal deserves to be dismissed.

7. It is stated by the learned Counsel for the appellant, Shri Thakker, that the appellant is still a bachelor.

Nobody knows the reason as to why he continues or prefers to be a bachelor. He has not filed any affidavit even in this Court to say that because of impotency developed, he has preferred not to marry.

8. In the matter of ***A.S. Rajara*** (*supra*), the Court observed that in case of injuries which form a class in exception, particular amount of compensation should be awarded. The Court, while referring to the judgements of the United Kingdom, observed that particular compensation should be awarded in case of particular injuries. In the said case, a young person of 26 years had suffered severe multiple injuries, the abdomen was crushed under the wheel of the truck, there was total rupture of urethra, the claimant was required to be hospitalised for treatment at least five times, as after-effect of the accidental injuries the claimant developed hernia and also developed impotency. The Court

found that his future marriage prospects were totally ruined and the sufferings would be long life and the hardship would continue so long as he is alive. The Court observed that in view of the said injuries, the claimant was entitled to a sum of Rs.75,000/-.

9. True it is, that in a case where a person suffers an injury, then, he is always entitled to proper compensation. An accident and the claim petition should not prove a windfall in favour of such claimant, but, the compensation should be just and proper. The Courts are not required to be benevolent at the cost of others, nor the Courts are required to be too charitable in favour of a person, who comes as a claimant. Each and every Court is required to have a balanced approach with exercise of little discretion in favour of the claimant, who had suffered the injuries. In different class and type of injuries, different Courts have been awarding different amounts. No hard and fast rules can be made for making the award in favour of a particular person. It would be absolutely illogical and improper to borrow the wisdom from other judgements and award the compensation on a comparative basis. In a given case, if a young boy of 10 years' age suffers an injury to the femur, then, he may be awarded less in comparison to the man who suffers femur injury/fracture at the age of 50 plus. It is medically proved that a young boy's injury, including the pain, would heal fast, but, in case of an adult person, specially above 50 years, the injury is not likely to

heal and the injured person may have to limp for the rest of the life. In a given case, the injury may or may not affect the entire life.

10. In the said case, the Division Bench had observed that the learned Court below was unjustified in not accepting the statement of the claimant who had said that he had developed impotency. The Court observed that in a case like that, save and except the unshaken testimony on oath by the claimant who had suffered such physical handicap and which testimony had well stood the test of probability, nothing further could be brought on the records. In the said case, the Court also found that the doctor's evidence was supporting the claimant that he had become impotent and his future prospects were absolutely ruined.

In the present case, the claimant does not say that he has become impotent, but, simply says that he finds difficulty to urinate and while urinating, he feels pain. In a case where the injury is suffered to the urethra and dilatation procedure is going on, passing of urine is, in fact, painful, but, once the urethra is repaired and the dilatation process is over, the person would not feel pains. It is also to be noted that the accident took place on 26th April, 1980, the claim petition came to be filed in July-1980 and was finally disposed of on 5th August, 1981, that is, after a period of one year. From the doctor's statement, it would appear that the patient was required to come for dilatation of urethra

regularly for a period of one year or so and thereafter, once a year. If that be so, the complaint of the claimant that he was suffering pain while urinating would certainly and might have come to an end after the dilatation process was over.

11. Even otherwise the pain while urinating would not mean that the person had become impotent. Such statement should come out from the mouth of the claimant, he cannot be allowed to rely upon the medical opinion which is based on probabilities. A person is fit to have sexual intercourse or not cannot be decided by others, it is for such person to say that he is fit or unfit. In the present case, unfortunately, barring making a statement that while urinating, the claimant suffers pain, the claimant did not daresay that he has become impotent. It is also to be seen that in the matter of ***A.S. Rajara*** (*supra*), as after-effect of the accidental injuries, the claimant had suffered hernia. Present is not a case like that. In the said matter, the doctor observed that there was permanent difficulty in passing urine. Though present is not a case like that, but, even if I assume that the claimant would suffer pain at the time of urination, then too, the present case would not stand on the footing on which the case of ***A.S. Rajara*** (*supra*) was decided.

12. The doctor's evidence is that in the dilatation, the likelihood

of formation of false passage perity urethral abscess and fistula formation cannot be ruled out, but, this probability was not translated into action by producing the latest medical report of the claimant. The opinion is always based on the perception of the doctor which he develops on the basis of the facts produced before him. On one side, the said doctor was saying that these were the findings on the basis of the injury report dated 26th April, 1980, but, unfortunately, the latest medical report of the claimant was not brought on record. The doctor had opined that sexual life of the appellant was likely to be affected as the tissues around the urethra were damaged, but, at the same time, the doctor admitted that the injury was not likely to affect day to day pursuits of the life of the claimant. The doctor further opined that the changes and disturbance of sexual life may be there or may not be there. If such was the evidence, then, the claimant was required to state on oath that how his sexual life was adversely affected. One cannot ride on the medical opinion and say that though he remained silent, but, on the basis of the medical opinion, the matter should be decided.

13. What is within the personal knowledge of a particular person must be said by him. In the present case, unfortunately, the fact, which is personally and secretly known to the claimant, has not been stated by him.

14. It is also to be seen that Shri Pandya, learned Counsel, who appeared for the claimant before the learned tribunal, had made a fair concession during the course of the trial that the applicant had not received any permanent partial disability. He also admitted that the claimant's working capacity was not reduced. The Court observed that from the statement of the doctor, it would be clear that the claimant would be able to do his normal functions and it was not likely to affect day to day pursuits of life. If such were the concessions made before the learned Tribunal below, then, at the appellate stage, one cannot be allowed to make much ado about nothing. If somebody was required to make a statement before the Court and he failed and at the same time, concession was made by his Counsel that the injuries were not permanent, those were not even permanent partial disabilities and the doctor's evidence suggests that the man would have a normal life and would be able to perform his normal functions, then, it cannot be said that the learned Tribunal below was unjustified in restricting the award to the tune of Rs.31,350/-.

15. The matter in the case of ***A.S. Rajara*** (*supra*) was decided on its own facts. There, the Court found that apart from impotency, the claimant had suffered multiple injuries on vital parts of the body, which required his prolonged hospitalisation more than once at Baroda as well

as at Madras. The Court also observed that the grave injuries suffered by the claimant had reduced his life to the shadow of his original self. Present is not a case like that.

16. For the reasons aforesaid, I do not find any reason to interfere in the matter. The appeal deserves to and is, accordingly, dismissed.

[R.S.Garg, J.]

*kamlesh**